

A. G. Contract No. KR02-0496TRN  
ADOT ECS File: JPA 01-158  
Project: STP-000-6(106)P  
TRACS: 0940 MA GLN SR121 01C  
Section: Pasadena Avenue (Glendale)  
AAR/DOT No. 025-487-H

INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF GLENDALE

City of Glendale – C-4520

THIS AGREEMENT is entered into 23 July, 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF GLENDALE acting by and through its MAYOR and COUNCIL, (the "City").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-334 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The Arizona Corporation Commission is empowered by Arizona Revised Statutes Section 40-337 to participate in the funding of this project, and has authorized funds for this project.

4. Congress has authorized appropriations for the erection of automatic warning signals, automatic gate arms, plank crossings, pavement markings, and other appurtenances.

5. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

NO 25390  
Filed with the Secretary of State  
Date Filed: 07/23/02

Betty Bayless  
Secretary of State

William V. Greenwald

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing (Pasadena Avenue).

Preliminary and Construction Engineering	\$ 6,000.00
Install Cantilevers and Flashers and Gates (by railroad forces)	\$ 144,847.00
Total Project	\$ 150,847.00
Federal Aid Funds @ 94.3% of \$150,847.00	\$ 142,249.00
AZ Corp. Comm. Funds @ 5.7% of \$150,847.00	\$ 8,598.00
City of Glendale Funds	\$ 0.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. The City shall acquire the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the City shall remove from the City right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the City right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

5. Upon completion of construction, the City shall provide (exclusive of maintenance by the Railroad Company of its facilities), to include, but not limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The City shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work.

7. By such regulation as it may by ordinance provide, the City shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

### **III. MISCELLANEOUS PROVISIONS**

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the City for the benefit of the State in no way acts as a waiver by the City for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the City agrees to furnish and provide the State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007


City of Glendale  
Assistant City Engineer  
5850 W. Glendale Avenue  
Glendale, AZ 85301-2599

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF GLENDALE**

**STATE OF ARIZONA**  
Department of Transportation

By   
ED BEASLEY  
City Manager

By   
CATHERINE J. HEGEL  
Contract Administrator

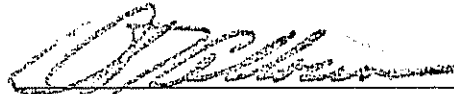
ATTEST:

By   
PAMELA OLIVEIRA  
City Clerk

RESOLUTION

BE IT RESOLVED on this 19th day of September, 2001, that I, the undersigned Mary E. Peters, as Director of the ARIZONA DEPARTMENT OF TRANSPORTATION, have determined that it is in the best interests of the STATE OF ARIZONA that the DEPARTMENT OF TRANSPORTATION, acting by and through the INTERMODAL TRANSPORTATION DIVISION, enter into an agreement with the CITY OF GLENDALE, for the purpose of defining responsibilities for the upgrade of the railroad crossing at Pasadena Avenue.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Deputy State Engineer or higher for approval and execution

A handwritten signature in dark ink, appearing to read 'D. Allocco', is written over a horizontal line.

DAVID R. ALLOCCO, PE  
Assistant State Engineer  
Engineering Technical Group

for Mary E. Peters, Director

RESOLUTION NO. 3567 NEW SERIES

ELAINE M. SCRUGGS  
MAYOR

ATTEST:

PAMELA OLIVEIRA  
City Clerk

STATE OF ARIZONA )  
County of Maricopa ) ss  
City of Glendale )

(SEAL)

APPROVED AS TO FORM:

RICK FLAAEN  
City Attorney

I, the undersigned, Pam Oliveira, being the duly qualified City Clerk of the City of Glendale, Maricopa County, Arizona, certify that the foregoing Resolution No. 3567 New Series is a true, correct and accurate copy of Resolution No. 3567 New Series, passed and adopted at a regular meeting of the Council of the City of Glendale, held on the 14<sup>th</sup> day of May, 2002, at which a quorum was present and voted in favor of said Resolution.

REVIEWED BY:

Given under my hand and seal this 1<sup>st</sup> day of July, 2002.

Terry Zerkle for  
City Manager

  
CITY CLERK

RESOLUTION NO. 3567 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO THE RAILWAY CROSSING AT PASADENA AVENUE AND BURLINGTON NORTHERN SANTE FE RAILWAY.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:


SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement between the City of Glendale and the Arizona Department of Transportation (JPA 01-158) be entered into, which agreement is now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreement on behalf of the City of Glendale.


PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 14<sup>th</sup> day of May, 2002.

  
MAYOR

ATTEST:

  
City Clerk (SEAL)

APPROVED AS TO FORM:

  
City Attorney

REVIEWED BY:

  
City Manager

JPA 01-158

APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF GLENDALE and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 31 day of May, 2002

A handwritten signature in black ink, appearing to read "R. P. Wilson", written over a horizontal line.

City Attorney





JANET NAPOLITANO  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
TRANSPORTATION SECTION  
1275 WEST WASHINGTON STREET, PHOENIX, AZ. 85007-2926

TRN Main: (602) 542-1680  
Direct: (602) 542-8855  
Fax: (602) 542-3646

MAIN PHONE : (602) 542-1680  
FACSIMILE : (602) 542-3646

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR02-0496TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED July 16, 2002.

JANET NAPOLITANO  
Attorney General

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:srs

Enc.

748550